The Supreme Court of the United States held in the case of *Brady* v. *Roosevelt S. S. Co., Inc.*, 317 U. S. 575, that a General Agent is liable for torts committed by its own employees.

A contrary view seems to have been expressed in the case of *Williams* v. *U. S.*, D. C. Va. 1954, 133 F. Supp. 317, affirmed 228 F. 2d 129, certiorari denied 76 S. Ct. 1054, 351 U. S. 986; rehearing denied 77 S. Ct. 26, 352 U. S. 860, 1 L. Ed. 2d 71.

There is confusion and uncertainty as to just what the Act means and, therefore, the United States Government and shipping companies acting as General Agents, and all officers and crews of such ships are concerned as to the correct meaning of the Act, particularly in view of the fact that different Courts have interpreted the Act differently.

Statement of the Case

History

This is an action instituted by the petitioner, a seaman, formerly employed on the S.S. Bucyrus Victory, who was injured as a result of an assault aboard the aforesaid vessel by another member of the crew, on August 7, 1953.

It is alleged in the complaint that respondent managed, operated and controlled the aforesaid vessel and acted under and pursuant to an agreement of agency with the owner of the vessel. It is further alleged that the respondent was under a duty to keep and maintain the vessel and its appurtenances in a safe and seaworthy condition, to provide personnel in accordance with the customary practice of commercial operators and the terms and conditions of the usual collective bargaining agreement, and in so acting under the terms of the agreement, provided a seaman who used excessive force and violence, injuring the petitioner, all as a result of the respondent's causing the vessel to be manned in such a fashion as to render the vessel unsea-

worthy. It is further alleged that the respondent negligently failed to provide the petitioner with prompt, adequate and proper medical care, ordering him to continue with his duties although injured, and has failed to provide maintenance to the petitioner.

The agency contract submitted by the respondent included Article "3" by the terms of which provision was made for respondent to procure and make available the officers and men required to fill the complement of the vessel. It was further provided that the methods and practices to be employed by the General Agent in procuring the crew were to be in accordance with certain specific procedures.

The gravamen of this action is the personal tort of the respondent in its breach of duty as aforesaid.

The petitioner was engaged in his duties in serving dinner in the officers' mess on August 7, 1953, and thereafter was proceeding to dispose of waste materials when a fellow seaman, Coles, in a thoroughly drunken condition struck the petitioner, causing him to fall against deck cargo striking his head, causing unconsciousness. Petitioner was compelled to stay at his quarters for a period of approximately seven days. The petitioner was compelled to return to work although his injuries were serious and known to be such. The chief mate not only ordered petitioner to work but terminated all treatment.

Subsequently, petitioner returned to Mobile, Alabama, and received treatment at the Marine Hospital.

Medical records submitted to the respondent indicate that the head injury resulted in seizures, blackouts and an indicated fractured skull.

The District Court below granted summary judgment to the respondent solely on the basis of the complaint and the agreement of agency. The decision was affirmed by the United States Court of Appeals for the Second Circuit on April 2, 1959.

Argument

Under the Act (46 U. S. C. Sec. 745) General Agents are granted immunity from liability "—for the negligence of the civil-service masters and crews with whom the United States manned the vessels."

It is our contention that this does not exonerate the General Agent when such General Agent undertakes to man the vessel and does so with an unseaworthy master or crew by reason of incompetency, inadequacy, dangerous propensities or other factors which render the vessel not reasonably safe for seamen employed thereon.

It does violence to common sense and logic to conclude that Congress intended to grant immunity to a steamship company acting as a General Agent, when its total disregard or negligent conduct resulted in the vessel being manned with incompetent or dangerous officers or crew, responsible for the proximate cause of injury to other officers or crew members of the ship.

The fact that the United States Government is legally bound to respondent in damages for the injuries thus inflicted is hardly justification for granting immunity to the company which brought about the injury through its tortious conduct.

We respectfully submit that Congress never intended such a result and therefore pray that this Honorable Court grant the petition in the furtherance of substantial justice. This question is a matter of grave concern, as heretofore stated, not only to the officers and crew of every United States Government owned vessel, operated by a General Agent, but to the United States Government and the shipping companies operating as General Agents as well.

Respectfully submitted,

JACOB RASSNER,
Attorney for Petitioner.

Opinion of United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 191—October Term, 1958

(Argued March 5, 1959 Decided April 2, 1959)

Docket No. 25363

WILLIAM JOSEPH HANLON, JR.,
Plaintiff-Appellant,

v.

WATERMAN STEAMSHIP CORPORATION,
Defendant-Respondent.

Before:

MEDINA and HINCKS, *Circuit Judges*,
and MATHES, *District Judge*.*

The plaintiff appeals from a summary judgment entered in the United States District Court for the Southern District of New York, Richard K. Levet, *Judge*. *Affirmed*.

JACOB RASSNER, New York, N. Y., for plaintiff-appellant.

JOSEPH M. COSTELLO, New York, N. Y. (HANRAHAN and COSTELLO, New York, N. Y., on the brief), for defendant-respondent.

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* United States District Judge for the Southern District of California, sitting by designation.

PER CURIAM:

It was not contested below, nor is it upon this appeal, that the United States owned and operated the S. S. Bucyrus Victory, upon which the alleged assault upon the plaintiff seaman by a fellow seaman took place. The defendant was not an operating agent of the United States; its only connection with the vessel arose from its general agency contract with the United States which required [Article 3(d)] that "[t]he General Agent shall procure and make available to the Master for engagement by him the officers and men required to fill the complement of the vessel (i.e., the Bucyrus Victory)." Since the defendant was not the owner, clearly it was not liable under a Jones Act claim. *Cosmopolitan Shipping Co.* v. *McAllister*, 337 U. S. 783. And this holding is equally conclusive against the plaintiff on his second and third causes of action (negligence in providing medical aid and maintenance and cure, respectively) which lie only against an owner.

On appeal, however, the plaintiff argues that its first cause of action also states a common law claim in that the defendant was negligent in the discharge of its contractual obligation to provide suitable seamen for engagement by the Master. But in this, the defendant was acting under the General Agency Contract with the United States, as indeed the complaint expressly alleges. For harm so caused a third person such as the plaintiff, the United States as principal would be liable. And under the Suits in Admiralty Act, 46 U. S. C. A. § 745, it is provided: "Where a remedy is provided by this Chapter, it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent * * * whose act or omission gave rise to the claim." *Williams* v. *United States*, 4 Cir., 228 F. 2d 129, 132-133, cert. denied 351 U. S. 986; *Atlantic Coast Line R. Co.* v. *Agwilines, Inc.*, 5 Cir., 195 F. 2d 459; *Richardson* v. *American President Lines*, D. C. S. D. N. Y., 144 F. Supp. 641; *Arnold* v. *Luckenbach S.S. Co.*, D. C. S. D. N. Y., 162 F. Supp. 58

Brady v. *Roosevelt Steamship Co.*, 317 U. S. 575, relied on by the plaintiff, was decided seven years before the quoted language was added to the statute by the amendment of December 13, 1950, 64 Stat. 1112. And for the suggestion that the plaintiff, as a third-party beneficiary, had a claim for breach by the defendant of the General Agency Contract, we find no support at all. *Robins Dry Dock & Repair Co.* v. *Flint*, 275 U. S. 303; 5 Corbin on Contracts § 776.

Affirmed.